



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2012-0488]

RIN 1625-AA00

Safety Zones; Multiple Firework Displays in Captain of the Port,
Puget Sound Zone

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing safety zones in Boston Harbor, Holmes Harbor, Port Gardner and Port Townsend for various summer fireworks displays. The safety zones are necessary to help ensure the safety of the maritime public during the displays and will do so by prohibiting all persons and vessels from entering the safety zones unless authorized by the Captain of the Port or his designated representative.

DATES: This rule is effective from 5:00 p.m. on July 3, 2012, until 1:00 a.m. on July 5, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG-2012-0488. To view documents mentioned in this preamble as being available in the docket, go to

<http://www.regulations.gov>, type the docket number in the

"SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail ENS Anthony P. LaBoy, Coast Guard Sector Puget Sound, Waterways Management Division; telephone 206-217-6323, e-mail SectorPugetSoundWWM@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the

agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Given the short time until the fireworks displays commence, it would be impracticable to issue an NPRM and subsequent final rule before the commencement of the fireworks displays. For that reason, we find there is good cause to issue this final rule without notice and comment.

Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because to do so would be impracticable, since the events would be over before notice could be given and comments taken, and it is immediately necessary to protect the events' spectators from the hazards associated with fireworks displays.

B. Basis and Purpose

(a) The authority for this action can be found in 33 CFR 1.05-1(f).

(b) Fireworks displays create hazardous conditions for the maritime public because of the large number of vessels that congregate near the displays as well as the noise, falling debris, and explosions that occur during the event. The establishment of a safety zone around displays helps to ensure the safety of the maritime public by prohibiting all persons and vessels from coming too close to the fireworks display and the

associated hazards.

C. Discussion of the Final Rule

This rule establishes four safety zones for the following firework displays: Boston Harbor Fireworks on July 3, 2012 in Boston Harbor near Olympia, WA; Celebrate America Festival on July 3, 2012 in Holmes Harbor near Freeland, WA; Everett 4th of July Foundation on July 4, 2012 in Port Gardner near Everett, WA; and Port Townsend July 4th Fireworks on July 4, 2012 in Port Townsend near Point Hudson. All persons and vessels will be prohibited from entering the safety zones during the dates and times they are effective unless authorized by the Captain of the Port or his Designated Representative.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it

under those Orders. This rule is not a significant regulatory action because it creates safety zones that are minimal in size and short in duration.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit through the established safety zones during the times of enforcement. This rule will not have a significant economic impact on a substantial number of small entities because the temporary safety zones are minimal in size and short in duration, maritime traffic will be able to transit around them and may be permitted to transit them with permission from the Captain of the Port or his designated representative.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental

jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have

implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and

3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of safety zones. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapters 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T13-220 to read as follows:

§ 165.T13-220 Safety Zones; Multiple Firework Displays in Captain of the Port, Puget Sound Zone

(a) Location. The following areas are designated as safety zones:

(1) Boston Harbor Fireworks, Boston Harbor, Olympia, WA: All waters of Boston Harbor encompassed within a 100 yard radius around position 47° 08.626'N, 122° 54.149'W.

(2) Celebrate America Festival, Holmes Harbor, Freeland, WA: All waters of Holmes Harbor encompassed within a 200 yard radius around position 48° 01.048'N, 122° 31.866'W.

(3) Everett Fourth of July Foundation, Port Gardner, Everett, WA: All waters of Port Gardner encompassed within a 300 yard radius around position 48° 00.672'N, 122° 13.391'W.

(4) Port Townsend July 4th Fireworks, Point Hudson, Port Townsend, WA: All waters of Port Townsend encompassed within a 150 yard radius around position 48° 06.900'N, 122° 45.120'W.

(b) Regulations. In accordance with the general regulations in 33 CFR part 165, subpart C, no person or vessel may enter or remain in the safety zone created by this section without the permission of the Captain of the Port or his designated representative. Designated representatives are Coast Guard Personnel authorized by the Captain of the Port to grant persons or vessels permission to enter or remain in the safety zone created by this section. See 33 CFR part 165, Subpart C, for additional information and requirements.

(c) Enforcement Period. The safety zones created by this section will be enforced as follows:

(1) Boston Harbor Fireworks, Boston Harbor, Olympia, WA: 5:00 p.m. on July 3, 2012 until 1:00 a.m. on July 4, 2012.

(2) Celebrate America Festival, Holmes Harbor, Freeland, WA: 5:00 p.m. on July 3, 2012 until 1:00 a.m. on July 4, 2012.

(3) Everett Fourth of July Foundation, Port Gardner, Everett, WA: 5:00 p.m. July 4, 2012 until 1:00 a.m. on July 5, 2012.

(4) Port Townsend July 4th Fireworks, Point Hudson, Port Townsend, WA: 5:00 p.m. on July 4, 2012 until 1:00 a.m. on July 5, 2012.

DATED: June 1, 2012 S. J. Ferguson
Captain, U. S. Coast Guard
Captain of the Port, Puget Sound

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